

# Exhibit A

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6  
7 **UNITED STATES DISTRICT COURT**  
**WESTERN DISTRICT OF WASHINGTON**

8  
9 FEDERAL TRADE COMMISSION,

**Case No.**

10 Plaintiff,

11 v.

12 AMAZON.COM, INC.

13 Defendant.  
14

15 **DECLARATION OF ADAM ROTTNER**

16 (Pursuant to 28 U.S.C. § 1746)

17  
18 I, Adam Rottner, hereby state that I have personal knowledge of the facts set forth below.

19 If called as a witness, I could and would testify as follows:

- 20 1. I am a United States citizen and am over eighteen years of age. I am employed by the  
21 Federal Trade Commission (“FTC” or the “Commission”) as a Senior Investigator in the  
22 Division of Enforcement, Bureau of Consumer Protection. My office address is 600  
23 Pennsylvania Avenue, NW, Washington, DC 20580.

- 1 2. As an Investigator with the FTC, my duties include investigating possible violations of  
2 the laws and regulations the FTC enforces and possible violations of Orders obtained by  
3 the Commission.
- 4 3. In my duties as an Investigator, I engage in discovering, reviewing, and capturing website  
5 content; making undercover calls and purchases; preserving evidence; and analyzing data  
6 as it relates to investigations to which I am assigned.
- 7 4. I was assigned to work on the Commission's investigation into this matter in February  
8 2021.
- 9 5. A number of attachments are included with this declaration. In accordance with FTC  
10 procedures and this Court's rules, information from some of these attachments may have  
11 been redacted in order to protect sensitive information such as financial account numbers,  
12 personally identifiable information, and FTC undercover identities.
- 13 6. Consistent with Local Rule 10(e)(10), highlighting has been added to the attachments to  
14 indicate excerpts referenced in this declaration or the accompanying motion.

#### **DARK PATTERNS INVESTIGATION**

- 15
- 16 7. On March 16, 2021, the FTC issued a Civil Investigative Demand ("CID") to  
17 Amazon.com, Inc ("Amazon"), initiating this investigation (the "Dark Patterns  
18 Investigation").
- 19 8. Later that month, counsel for the FTC was contacted by Laura Kim, a Partner at  
20 Covington & Burling, LLP ("Covington"), who was retained to represent Amazon.  
21 Covington has represented Amazon continuously since March 2021 in this investigation.  
22  
23

- 1 9. [REDACTED]
- 2 [REDACTED]
- 3 [REDACTED]
- 4 10. [REDACTED]
- 5 [REDACTED]
- 6 [REDACTED]
- 7 11. [REDACTED]
- 8 [REDACTED]
- 9 [REDACTED]
- 10 [REDACTED]
- 11 12. [REDACTED]
- 12 [REDACTED]
- 13 [REDACTED]
- 14 13. [REDACTED]
- 15 [REDACTED]
- 16 14. [REDACTED]
- 17 [REDACTED]
- 18 [REDACTED]
- 19 [REDACTED]
- 20 15. [REDACTED]
- 21 [REDACTED]
- 22 [REDACTED]
- 23

[illegible]

20. I reviewed the transcript of [REDACTED]  
[REDACTED], which is excerpted in Attachment 32<sup>1</sup> to this  
declaration.

21. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] The document is “IC1” in the *in camera*  
submission being provided to the Court.

22. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

23. I also reviewed the transcript from [REDACTED]  
[REDACTED] (excerpted in Attachment 15).

24. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

---

<sup>1</sup> All attachments to this declaration are identified in ¶¶ 53-89.

1 [REDACTED]

2 [REDACTED]

3 b. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 25. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 26. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 27. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 28. [REDACTED]

23 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 a. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 29. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 30. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 31. [REDACTED]

21 [REDACTED]

22 [REDACTED]

23



1 [REDACTED]

2 [REDACTED]

3 32. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 33. [REDACTED]

18 [REDACTED]

19 34. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 a. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 35. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 36. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

**OTHER CLAWED BACK DOCUMENTS**

37.

[REDACTED]

38.

[REDACTED]

39.

[REDACTED]

a.

[REDACTED]

40.

[REDACTED]

41.

[REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 42. [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

**INFORMATION REGARDING CLAWED BACK DOCUMENTS**

21 43. Below, I refer to the [REDACTED] documents referenced in ¶¶ 26, 30, and 37-42 as the “Clawed  
22 Back Documents.”  
23

44. [REDACTED]

[REDACTED]

45. [REDACTED]

[REDACTED]

46. Counsel for the FTC engaged a filter review, or taint, team to prepare the Clawed Back Documents referenced above for submission to the Court and to provide information referenced in paragraphs 47-52 below. The filter team consisted of an FTC paralegal and FTC attorney—both of whom were not on the case team—working under the supervision of an Assistant Director in the Division of Enforcement.

47. The filter team compiled the original, as-produced versions of the Clawed Back Documents and looked at them in order to determine how many were originally produced to the FTC with redactions (*i.e.*, had black redaction boxes on the face of the document).

- a. The team determined that 21 of the Clawed Back Documents were originally produced with redactions. These documents are identified in the filter team chart, which is Attachment 37 to this Declaration.

48. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- a. [REDACTED]

[REDACTED]

[REDACTED]

1 49. For [REDACTED] of the documents that Amazon clawed back, Amazon produced replacement  
2 versions with redactions. These are described as “partially” redacted in the filter team  
3 chart (Attachment 37). I reviewed the replacement, redacted versions of the Clawed  
4 Back Documents to determine how many of the replacements were the same or similar to  
5 one another, which would indicate that the original Clawed Back Documents had been  
6 produced multiple times before being clawed back.

7 a. I determined that of the [REDACTED] Clawed Back Documents for which Amazon provided  
8 replacements, [REDACTED] were the same as other Clawed Back Documents. (This assumes  
9 that the redacted portions of the document, which Amazon has asserted are  
10 privileged, are the same as one another.) The [REDACTED] documents are identified in the  
11 filter team chart (Attachment 37).

12 b. I determined that an additional [REDACTED] Clawed Back Documents (beyond those  
13 identified in subparagraph 49(a) above) were substantively similar to one another,  
14 meaning the documents appeared to be different versions of the same document  
15 and shared some identical language. [REDACTED]

16 [REDACTED]

17 [REDACTED] The 9 [REDACTED] are identified in

18 the filter team chart (Attachment 37).

19 50. Additionally, as described above, Amazon itself identified [REDACTED]

20 [REDACTED]

21 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 51. Based on the information in paragraphs 48-50 above, I determined that Amazon produced  
4 copies of [REDACTED] of the Clawed Back Documents multiple times and that Amazon produced  
5 substantively similar copies of an additional [REDACTED] of the Clawed Back Documents multiple  
6 times. It is possible that there are more documents that fit either of these categories, but I  
7 have not been able to review documents that Amazon clawed back in full because the  
8 FTC has sequestered those documents.

9 52. Attachment 37 is a chart providing information for each Clawed Back Document. The  
10 chart contains eight columns related to the filter team's work, as described above. Unless  
11 otherwise noted, the columns and data in the chart were provided to me by the filter team.

- 12 a. The first column ("IC") identifies each document by an "IC" (*in camera*) exhibit  
13 number, as provided by the filter team.
- 14 b. The second column, ("Bates Number(s)") identifies the Bates number applied to  
15 the produced document by Amazon. For the most part, these Bates numbers came  
16 from the clawback letters sent by Amazon. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]  
22  
23

- 1 c. The third column (“Full or Partial Clawback”) reads “Full” when Amazon did *not*  
2 produce a replacement version of the clawed back document with privilege  
3 redactions and “Partial” when a redacted replacement version was provided.
- 4 d. The fourth column (“Date of Clawback”) was added by me and reflects the date a  
5 document was clawed back (as described above), based on my review of  
6 correspondence and Amazon’s privilege logs.
- 7 e. The fifth column (“Privilege Asserted by Amazon”) was added by me and reflects  
8 the privilege(s) that Amazon is asserting over the document, based on my review  
9 their privilege logs.
- 10 i. For [REDACTED] I have been unable to locate  
11 any corresponding privilege log provided by Amazon and therefore do not  
12 know what privilege Amazon is asserting. For these same documents, I  
13 have not been able to locate a replacement version of the document.  
14 Therefore, I have identified them as “full,” rather than “partial,”  
15 clawbacks.
- 16 f. The sixth column (“Was Clawed Back Version Redacted when Originally  
17 Produced?”) identifies which Clawed Back Documents were originally produced  
18 by Amazon with privilege redactions.
- 19 g. The seventh column (“Is the Document the Same as Another Clawed Back  
20 Document?”) was added by me and identifies which, if any, of the Clawed Back  
21 Documents are the same as another Clawed Back Document, based on the process  
22 identified in ¶ 49 above.  
23



h. The eighth column (“Is the Document Similar to Another Clawed Back Document?”) was added by me and identifies which, if any, of the Clawed Back Documents are substantively similar to another Clawed Back Document, based on the process identified in ¶¶ 49-50 above. By “substantively similar,” I mean that the documents generally appear to be different versions of the same document and share some identical language.

#### **OTHER DOCUMENTS**

53. Attached hereto as **Attachment 1** is a true and correct copy of a letter [REDACTED]  
[REDACTED].
54. Attached hereto as **Attachment 2** is a true and correct copy of a letter [REDACTED]  
[REDACTED].
55. Attached hereto as **Attachment 3** is a true and correct copy of a letter [REDACTED]  
[REDACTED].
56. Attached hereto as **Attachment 4** is a true and correct copy of a list the FTC compiled of in-house Amazon attorneys. [REDACTED]  
[REDACTED].
57. Attached hereto as **Attachment 5** is a true and correct copy of the FTC’s March 16, 2021 Civil Investigative Demand to Amazon.
58. Attached hereto as **Attachment 6** is a true and correct copy of a March 14, 2022 Business Insider article with the title, “*Internal documents show Amazon has for years knowingly tricked people into signing up for Prime subscriptions. ‘We have been deliberately confusing,’ former employee says.*”

- 1 59. Attached hereto as **Attachment 7** is a true and correct copy of a letter [REDACTED]  
2 [REDACTED].
- 3 60. Attached hereto as **Attachment 8** is a true and correct copy of a letter [REDACTED]  
4 [REDACTED].
- 5 61. Attached hereto as **Attachment 9** is a true and correct copy of a letter [REDACTED]  
6 [REDACTED].
- 7 62. Attached hereto as **Attachment 10** is a true and correct copy of a letter [REDACTED]  
8 [REDACTED].
- 9 63. Attached hereto as **Attachment 11** is a true and correct copy of a letter [REDACTED]  
10 [REDACTED].
- 11 64. Attached hereto as **Attachment 12** is a true and correct copy of an email [REDACTED]  
12 [REDACTED]  
13 [REDACTED].
- 14 65. Attached hereto as **Attachment 13** is a true and correct copy of a letter [REDACTED]  
15 [REDACTED].
- 16 66. Attached hereto as **Attachment 14** is a true and correct copy of transcript excerpts [REDACTED]  
17 [REDACTED].
- 18 67. Attached hereto as **Attachment 15** is a true and correct copy of transcript excerpts [REDACTED]  
19 [REDACTED],  
20 [REDACTED].
- 21 68. Attached hereto as **Attachment 16** is a true and correct copy of transcript excerpts [REDACTED]  
22 [REDACTED].  
23

69. Attached hereto as **Attachment 17** is a true and correct copy of transcript excerpts [REDACTED]  
[REDACTED].

70. Attached hereto as **Attachment 18** is a true and correct copy of [REDACTED]  
[REDACTED].

71. Attached hereto as **Attachment 19** is a true and correct copy of transcript excerpts [REDACTED]  
[REDACTED].

72. Attached hereto as **Attachment 20** is a true and correct copy of [REDACTED]  
[REDACTED].

73. Attached hereto as **Attachment 21** is a true and correct copy of [REDACTED]  
[REDACTED].

74. Attached hereto as **Attachment 22** is a true and correct copy of transcript excerpts [REDACTED]  
[REDACTED].

75. Attached hereto as **Attachment 23** is a true and correct copy of a document produced by  
Amazon to the FTC [REDACTED]  
[REDACTED]  
[REDACTED].

76. Attached hereto as **Attachment 24** is a true and correct copy of [REDACTED]  
[REDACTED]  
[REDACTED].

77. Attached hereto as **Attachment 25** is a true and correct copy of transcript excerpts [REDACTED]  
[REDACTED].

1 78. Attached hereto as **Attachment 26** is a true and correct copy of an email [REDACTED]

2 [REDACTED]

3 [REDACTED].

4 79. Attached hereto as **Attachment 27** is a true and correct copy of a letter [REDACTED]

5 [REDACTED]

6 [REDACTED].

7 80. Attached hereto as **Attachment 28** is a true and correct copy of [REDACTED]

8 [REDACTED].

9 81. Attached hereto as **Attachment 29** is a true and correct copy of [REDACTED]

10 [REDACTED].

11 82. Attached hereto as **Attachment 30** is a true and correct copy of a letter [REDACTED]

12 [REDACTED]

13 [REDACTED].

14 83. Attached hereto as **Attachment 31** is true and correct copy of an email [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED].

18 84. Attached hereto as **Attachment 32** is a true and correct copy of transcript excerpts [REDACTED]

19 [REDACTED].

20 85. Attached hereto as **Attachment 33** is a true and correct copy of transcript excerpts [REDACTED]

21 [REDACTED].

22 86. Attached hereto as **Attachment 34** is a true and correct copy of transcript excerpts [REDACTED]

23 [REDACTED].

1 87. Attached hereto as **Attachment 35** is a true and correct copy of transcript excerpts [REDACTED]

2 [REDACTED]

3 [REDACTED].

4 88. Attached hereto as **Attachment 36** is a true and correct copy of an email [REDACTED]

5 [REDACTED].

6 89. Attached hereto as **Attachment 37** is a true and correct copy of the FTC filter team chart  
7 as referenced above in paragraph 52.

8 I declare under penalty of perjury that the foregoing is true and correct.

9  
10  
11 Executed on June 18, 2023.



Adam Rottner

# **Attachment 1**

## **Filed Under Seal**

# **Attachment 2**

## **Filed Under Seal**

# **Attachment 3**

## **Filed Under Seal**



# **Attachment 4**

## **Filed Under Seal**

# **Attachment 5**

## **Filed Under Seal**

# Attachment 6

## **Internal documents show Amazon has for years knowingly tricked people into signing up for Prime subscriptions. 'We have been deliberately confusing,' former employee says.**

[Eugene Kim](#)

Mar 14, 2022, 2:53 PM

- **Amazon was aware of customer complaints about feeling tricked into signing up for the Prime membership for years, internal emails and documents show.**
- **The company has internally discussed clarifying the signup language since at least 2017, but it hasn't made many changes so far.**
- **Plans to avoid confusing customers were considered, but shelved because they reduced overall subscription growth.**

Amazon has worried for years that it tricks customers into signing up for Prime subscriptions. A previously undisclosed inquiry from the Federal Trade Commission has put more pressure on the company to fix it.

Internal documents obtained by Insider show the company has been concerned since at least 2017 that user interface designs on Amazon.com have led customers to feel manipulated into signing up for Prime.

These design decisions, commonly known as "dark patterns," push customers into acting unintentionally often through misleading imagery or intentionally vague offers. For example, a single click on the "Get FREE Two-Day Delivery with Prime" tab at check out — with no additional confirmation step — gets shoppers automatically enrolled into a 30-day free trial of Amazon's Prime program, which later converts to a paid membership unless the user cancels it. For [cancellations](#), users have to jump through a number of pages to end the subscription.

Amazon was aware of these complaints for years but did not take serious action, according to these previously unreported internal documents and six current and former employees who spoke to Insider. In several cases, fixes for these issues were proposed and considered, but resulted in lower subscription growth when tested, and were shelved by executives, the documents show.

Some employees have also been worried by the increased attention from the Federal Trade Commission on subscription sign-ups, which may put the onus on Amazon to take further action. The agency is already scrutinizing the company in a sprawling [antitrust probe](#), and earlier this year the FTC's chairperson, Lina Khan, publicly issued general warnings about so-called dark patterns and difficult-to-cancel subscriptions. The company has also faced multiple lawsuits in recent years from shoppers who said they were tricked into signing up for Prime.

The FTC has asked Amazon about its subscription practices in recent years, according to people familiar with the matter who spoke on condition of anonymity for fear of retaliation from Amazon. Amazon

corporate lawyers held private meetings with members of the Prime team as recently as 2021 in response to these inquiries, these people said.

The confusion over sign-ups isn't limited to Prime, and Amazon is now looking to clarify language over other subscription services as well, internal documents show.

These issues come as Prime, best known for free delivery and streaming video content, has enjoyed unprecedented growth to become one of the most popular subscription programs in the world, with more than [200 million members](#) as of last year. Prime, to former CEO Jeff Bezos and other top Amazon executives, represents the best of the company's mission in putting the customer first by offering fast delivery and a bevy of other perks at what it perceives to be a bargain price of \$139 a year in the US.

But Amazon's perfunctory measures on addressing subscriber confusion also run counter to these professed values of customer-centricity, and show how the giant retailer can sometimes use the veil of customer obsession to its advantage — in this case, enticing users to free delivery when the motivation is boosting membership count and revenue.

In an email to Insider, Amazon's spokesperson said the sign-up and cancellation process for Prime are "simple and transparent and clearly present customers with choices and the implications of those choices."

"Customer transparency and trust are top priorities for us. By design we make it clear and simple for customers to both sign up for or cancel their Prime membership. We continually listen to customer feedback and look for ways to improve the customer experience," Jamil Ghani, VP of Amazon Prime, said in a statement.

As recently as this year, Amazon has internally proposed clearer subscription offers and cancellation processes across its Prime, Prime Video, Kindle Unlimited, and Amazon Music services. At least one proposed change — an end to messages that "shamed" the customer for not subscribing — has been implemented.

The FTC declined to comment for this article.

### **'We have been deliberately confusing'**

For years, customer-focused teams inside Amazon have repeatedly come up with potential solutions, but these suggestions were not implemented or were disregarded in favor of prioritizing subscription growth over sign-up clarity, according to documents viewed by Insider.

Internal reports from the Shopper Frustrations team in 2017, when Amazon faced multiple lawsuits about Prime's sign-up process, show steps to improve language clarity around one particular point of confusion: the "FREE shipping" button. An internal report at the time said, "The button's label 'Continue with FREE 1-day shipping' did not adequately convey that the customer was signing up for a membership."

"Unintentional sign-ups erode customer trust," one of the documents said. "Either way improvements in clarity during sign-up are needed," another document said.

After testing different prompts, the Prime team discovered the default "Get FREE Two Day Shipping" tab was creating a lot of confusion and dissatisfaction. Instead, they found the "Start your 30-day free trial" term was much clearer.

Those concerns, however, were not completely addressed, and the recommendations were not implemented at the time, according to the documents and people directly familiar with the matter.

A year later, in a 2018 internal report, Amazon found that customers "did not understand the impact of their choice" when they clicked on buttons titled "Continue with FREE 1-day shipping" or "Get free two day shipping." It said the customers didn't understand the "FREE 2-day shipping with Prime" label required a subscription, leading to "frustration over unexpected financial obligation." The report gave the issue a "critical" status, pointing out that "Prime signups are not always transparent."

Amazon has made some changes to the sign-up page since then, but the current and former employees who spoke to Insider said repeated red flags in the sign-up process have not been meaningfully addressed, even now.

According to a 2020 internal report, the Prime team again suggested replacing the small yellow check-out box with a bigger, more prominent blue check-out box that said "Start your 30-day free trial," alongside auto-renewal pricing information. But when Insider created a new Amazon account this month, the check-out page was mostly identical to its 2020 design, with a yellow check-out prompt that said, "Get FREE Two-Day Delivery with Prime" — a term customers have complained about since at least 2017.

"We have been deliberately confusing," one of the people who spoke with Insider said. "It's very un-Amazonian in terms of customer obsession."

**Amazon Customer, why pay for shipping? Save \$5 with fast, free shipping on this order**



- ✓ Why pay for shipping? Get FREE Two-Day Shipping on this order
- ✓ Start a 30-day free trial of Amazon Prime
- ✓ FREE Two-Day Shipping
- ✓ FREE Standard Shipping
- ✓ FREE Release-Date Delivery (on qualifying items)
- ✓ Discounted One-Day and Saturday Shipping

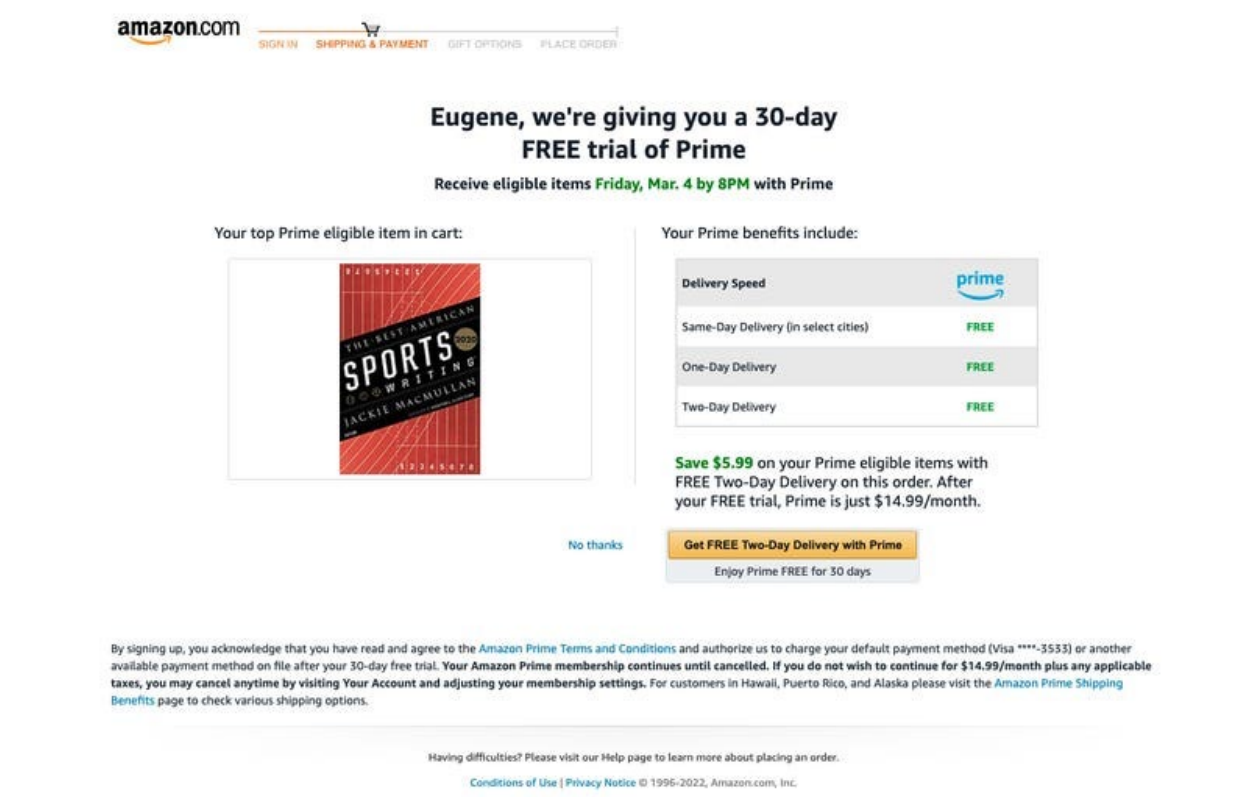
Fast, free shipping - effective immediately. You can cancel your free trial anytime.

No thanks, I do not want fast, free shipping

**Get fast, free shipping**

By signing up, you agree to the [Amazon Prime Terms](#) and authorize us to charge your default payment method or another payment method on file after your 30-day free trial. Your Amazon Prime membership continues until cancelled. If you do not wish to continue for \$99/year + any taxes, you may cancel any time by visiting [Your Account](#).

Amazon Prime sign-up screen in 2017 Amazon



Amazon Prime sign-up page, March 2022. Amazon has made several changes to its sign-up page, including clarification a user was signing up for a "FREE trial" of Prime, but many old issues that Amazon knew confused customers have gone unchanged. Amazon

The lack of change may have to do with internal tests that showed that clearer language led to fewer sign-ups.

The new language in 2017, for instance, had led to a negative impact of "260,000 annualized paid Prime members," which would have required a 12% increase in Prime users to offset, one email obtained by Insider said. Still, customer confusion was an issue for Prime: One data point from August 2017 found that 17,131 of the 25,542 cancellation requests directly handled by the Prime team were related to "accidental sign-ups."

Even the company's most senior leaders were aware of this problem. In 2017, former senior vice president of marketplace Sebastian Gunningham asked the Prime team to "go faster on Shopper Frustrations" related to this issue, one of the emails said. Ghani, Prime's VP, asked for better ways to measure whether a sign-up is a "good" sign-up after reviewing customer insights. Greg Greeley, Prime's leader at the time, appeared to find excuses elsewhere, questioning whether the accidental sign-ups might have been due to the color of the button.

"Shoppers in countries that are new to online shopping may not know that a yellow button means they're buying Prime, like we do," Greeley said, according to one of the emails.

The Prime team was aware it was making a tradeoff for more members at the expense of customer satisfaction. One email from 2017 said the ambiguous language was going to "tip the balance from customer centricity toward sign-up business goals."

One person said Amazon's behavior was more rooted in the company's biased love for Prime's value. The Prime team truly believed membership was an "intrinsic good" that would benefit every shopper, this person said. It was a notion underscored by Amazon's founder, Jeff Bezos, who said "you'd be irresponsible not to be a member" [in his 2016 annual shareholder letter](#).

"What that meant was anything they did to keep you as a Prime member was actually customer-focused," another person said. "It's so obvious the wrong things were being done."

Gunningham and Greeley declined to comment.

### **Amazon's sign-up practices gets attention from US regulators**

The FTC has been quizzing Amazon about its Prime sign-up flow in recent years, prompting Amazon's corporate lawyers to hold confidential meetings with some team members last year, according to people familiar with the matter.

The agency wanted to know if there was a pattern of deception in the Prime signup process, and whether Amazon's top leaders were deliberately involved in the effort, these people said. FTC representatives also searched for additional documents Amazon could share regarding this issue. It's unclear if the probe is still on-going.

In this case, the FTC may be looking for violation of consumer protection laws, not antitrust policies, according to Steven Salop, a law professor at Georgetown University. In Europe, Amazon could be liable for "abuse of dominance," but the US doesn't have that type of offense in its antitrust laws, he said.

"It's really consumer protection – deceptive conduct," Salop said in an email.

Further crackdown may be in the cards. Khan, the FTC chair, [tweeted in January](#) that the language around sign-ups and cancellations for subscription services in general should not have any ambiguity.

"FTC has made clear that to comply with law, businesses must ensure sign-ups are clear, consensual, and easy to cancel," her tweet said.

The FTC, in fact, issued [detailed guidance](#) to companies in October about "deploying illegal dark patterns that trick or trap consumers into subscription services." The regulator said it's "ramping up" its enforcement following an increase in complaints about "the financial harms caused by deceptive sign up tactics, including unauthorized charges," according to the announcement, which did not mention Amazon or any other companies specifically.

Amazon Prime's multi-step cancellation process could also come under further scrutiny. Last year, an activist group led by Public Citizen filed a [complaint](#) with the FTC asking for an investigation into how Amazon Prime's complex cancellation process is designed to "unfairly and deceptively undermine the will of the consumer."



The petition followed a similar complaint filed by the Norwegian Consumer Council last year. In the [complaint](#), the agency accused Amazon of using these so-called dark patterns to subtly trick users into doing things they didn't intend to do.

"Throughout the process, Amazon manipulates users through wording and graphic design, making the process needlessly difficult and frustrating to understand," the complaint said.

Internal documents also show that Amazon intentionally drew out the process of canceling a Prime membership. Under a project code-named "Iliad," Amazon created multiple layers of questions and new offers before a Prime member could cancel their subscription, in hopes of reducing member churn. The number of cancellations dropped by 14% at one point in 2017 following the launch of Iliad, and fewer members were navigating to the final cancellation page, one of the documents said.

"Although this data is directional, retention appears to be trending positively," it said. This process, intended to persuade customers to not cancel, is common among subscription services, and is not directly related to the questions Prime received from the FTC. Implementations from the Iliad project, including [a four-step cancellation process](#), appear to still be active.

### **'High-clarity proposals' but few changes**

Amazon has made at least one notable change to the Prime sign-up process in recent years, in order to prevent the negative "shaming" of customers, according to an internal email. The option to decline a free Prime trial offer now comes with a simple "No thanks" tab instead of the longer "No Thanks, I don't want FREE Two-Day Shipping" that was previously on the page.

"There is a well established external trend (negatively perceived) called 'customer shaming' and we're even specifically called out in some cases," one internal email said.

Other efforts to clean up its language are underway.

In 2020, Amazon internally created a mock draft with "high-clarity proposals" around its many subscription services, including Prime, Amazon Music, and Kindle Unlimited.

For Prime, the company suggested adding the exact price and auto-renew details in the checkout page, and sending out proactive reminders before their renewals. It also recommended different color schemes and bigger tabs to make the buttons more prominent. Other suggestions include an additional pop-up window to reaffirm enrollment into the free trial and a link to easily "undo" an accidental sign-up. It made similar suggestions for other non-Prime services. None of those recommendations appear to have been implemented yet, based on Insider's order earlier this month.

In 2021, Amazon conducted another internal study, called "Digital Subscriptions Workflow Consistency," according to internal documents seen by Insider. The report recommended the broader promotion of the existing ["Your Subscriptions and Memberships"](#) page, a centralized portal that lists every Amazon subscription service the user is enrolled in. Also, it suggested agreeing on an "Amazon-wide standard for digital subscription and cancellation workflows" to give a more consistent look and procedure across its services.

The 2021 study recommended — again — the use of an additional confirmation page for all trial services. It said customers were "displeased when there wasn't an additional step" before starting the free trial, calling the current workflow "an unwelcome surprise."

"This was a trust buster for these customers, and hints at why accidental sign-ups happen," it said.

That study also recommended making the cancellation process less confusing by "reducing the number of confirmation buttons and overall clicks during subscription cancellation, in favor of a 'resubscribe' button after cancellation is complete."

Earlier this year, other parts of Amazon embarked on similar clarifying projects. Prime Video, for example, launched Project Clean Slate, a new initiative aimed at making it easier to understand what content is free or not.

"Clean Slate reimagines the Prime Video CX across devices and surfaces, with a focus on simplifying the discovery of content free to Prime members to ensure our service is useful and personal," an internal document said.

Despite all these proposals, Amazon's practice has been to stand behind the legal reasoning of its fine print.

Buried deep in the Conditions of Use every customer needs to agree to, Amazon says payment is required "unless you notify us before a charge."

That was the explanation Amazon lawyers gave in response to a 2017 [class-action suit led by Latoya Christmas](#) that alleged Amazon "concealed, suppressed and/or omitted" material facts about the Prime sign-up process, leading to unintentional charges for the then-\$99 annual membership fee.

"Each time a customer makes a purchase using Amazon's standard check-out page, they accept the COUs," the lawyer's declaration said, referring to Amazon's Conditions of Use. "If a customer does not want to accept the COUs, they are free to cancel their purchase."

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*Do you work at Amazon? Got a tip? Contact reporter Eugene Kim via the encrypted messaging apps Signal or Telegram (+1-650-942-3061) or email ([ekim@insider.com](mailto:ekim@insider.com)). Reach out using a nonwork device.*

*[Check out Insider's source guide](#) for other tips on sharing information securely*

# **Attachment 7**

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# **Attachment 8**

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